

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANYELL THOMAS, RASHAUN F. FRAZER,
ANDRAE WHALEY, AND ELENI MIGLIS,
INDIVIDUALLY AND ON BEHALF OF ALL OTHER
EMPLOYEES SIMILARLY SITUATED,

Plaintiff,

- against -

BED BATH AND BEYOND, INC.

Defendants.

Case No. 1:16-cv-08160

DECLARATION OF
ELIZABETH PADILLA

DECLARATION¹ OF ELIZABETH PADILLA

I, Elizabeth Padilla, under penalty of perjury, declare as follows:

1. My name is Elizabeth Padilla, I am over the age of eighteen and competent to make this declaration. The following statements are true and correct to the best of my knowledge.
2. I am currently a resident of Kings County, New York.
3. From February 4, 2003 to September 21, 2016², I was employed by Defendant BED BATH AND BEYOND, INC. (hereafter "BBB") to work as a Department Manager ("DM") at BBB's store located at 410 E. 61 St. New York, NY 10065 (Store # 361).
4. Prior to start working for BBB, I went through two rounds of interviews first with a HR at BBB's store in SoHo, then with a store manager Jennifer at Store # 361. I was hired by Jennifer during my interview, she told me that my annual salary would be \$33,000 and that I would be working the overnight shifts. Jennifer did not break down my annual salary for me nor did we

¹ For the purpose of this Declaration, if an individual is identified by first name only it means the Plaintiff either does not know or do not remember that individual's last name. The spelling of the individuals' names are also based on the Plaintiff's best recollection or knowledge.

² For health reasons, during the relevant period for the instant action, Ms. Padilla took leave of absence for the following periods: from February 21, 2016 to September 21, 2016; from April 8, 2015 to May 5, 2015; from October 1, 2013 to April 2014.

have any detailed discussion about how my salary would be calculated, she also did not mention anything about overtime compensation. There was no discussion, at both interviews, about the number of hours I would be working.

5. Two weeks after my hire, I had a two or three hours of orientation with other new employees at BBB's Store # 361. They talked about BBB's general policies and regulations at the orientation and there was no discussion about the policies regarding working hours or compensation. All the new hires were given the same employee handbook. I only remember signing the employee handbook, some ladder safety form and tax forms such as I-9 form.

6. Someone gave me my work schedule later on the day of the orientation and it has one overnight work shift (from 10:00 p.m. to 8:30, with an one hour-break between 3:00 am to 4:00 am) for all my five workdays.

7. Based on that schedule, my understanding about my work hours and pay at the time that I start working for BBB was that I was to work 47.50 hours a week, and my annual salary is to cover the 47.50 hours of work.

8. After that conversation with Jenifer during the interview, the only time that I would have conversation with anyone from BBB about my salary was the times they gave me a raise each year at the time of my annual performance review, and the total the percentage of my raise by including that in my review report.

9. No one from BBB mentioned the term fluctuating work week to me at the time of my hire or shortly thereafter, and I do not recall anyone from BBB, either verbally or via written document, explained to me how to calculate my salary.

10. BBB also did not informed me that I would be compensated at a fixed amount of salary regardless of how many hours I would work in a work week and they did not discuss

overtime compensation with me.

11. No one from BBB informed me, verbally or via written document, about how my overtime compensation, if any, would be calculated.

12. I learned the term “Chinese Overtime”³ from other DMs that I worked with. For example, maybe around two years after I starting working at BBB, I remember having a conversation with Dereck, a fellow DM. He was trying to figure out overtime pay and ask me if I know anything about Chinese Overtime, I told him that I never heard about that term before. I also remember having a conversation with John Mack about Chinese Overtime, who was an associate first and later became a DM. We were talking about work and hour pay in general and he asked me if I know how “Chinese Overtime” does work and I said I do not know.

13. Throughout out the years I had conversations with different individuals about our pay at BBB. Chinese Overtime was often a subject that would come up during those conversations yet no one seems to understand what it means or how does that work in terms of our salary calculation.

14. Those DMs who told me about Chinese Overtime also did not know what does BBB’s Chinese Overtime means or how does that work in terms of our salary calculation.

15. During my employment with the Defendants, I regularly worked five days⁴ a week. On any given day I would be assigned to any one of the two overnight shifts⁵: from 10:00 pm to 8: 30 am (“Shift I”) or from 9:30 pm to 8: 30 am (“Shift II”)⁶. Despite of the schedule, I actually worked from 10:00 pm to around 9: 30 am for Shift I. I normally had a one-hour break for both

³ For the purpose of this declaration, “Chinese Overtime” should be considered a synonym for FWW, and is used interchangeably with FWW.

⁴ Padilla worked overnight shifts, her days off normally were assigned a week in advance and there was no fixed scheduling in terms of which two days she would be off in a week. That said, she was always scheduled to be off on two consecutive days.

⁵ Prior to October 2014, Padilla only had one overnight shift schedule (from 10 pm to 8: 30 am)

⁶ Plaintiff generally worked the number of hours as scheduled for Shift II.

shifts. As a result, prior to October 2014, I generally worked around 52 hours. After October 2014, I would regularly work Shift II on two days out of a week and work Shift I for the other days. As a result, I consistently worked around 49 or 50 hours a week.

16. Every day I, as well as other DMs, were required to sign in and out on an employee work book to record the hours we worked each day. BBB started using a computer system (enter an employee Code) to track the number of hours we worked around the year 2015.

17. My starting annual salary was about \$33,000 and at the time of my departure my annual salary was \$50,000.

18. Throughout my employment with BBB I believed that my annual salary was to cover my scheduled 47.50 number of hours I work.

19. Throughout my employment with BBB, my understanding it that I had to work the full scheduled 47.50 hours, unless I had available "paid absence" hours, to be paid my full salary.

20. Throughout my employment with BBB as an overnight shift DM, I worked with : Dereck, Collin, John Mack and Edwin Andion Jr.. I remember having conversations with Edwin Andion Jr. on the floor about our compensation at BBB. We talked about the challenging overnight shift and work in general and about being underpaid. All of us did similar tasks and worked similar numbers of hours. For overnight DMs our daily tasks including but not limited to : take new items out the box , put price tag on the new items if needed , also put on security tag or spider wrap; Clean and wipe down shelf and fixtures , look and put shelves if needed; Search and scan aged items and re-price or clearance and place in the store or transfer out to other stores; When Maintenance is off we have to swipe all three floor or the floor that we were working in; Take in the truck (check off bins, pallets , audit cage & paperwork).

21. Based on my observation and conversation with others, I know that all of those DMs were subject to the same method of compensation.

22. During my time at BBB, I worked with AMs Paul, Keith Giddeon, Terry Phillips, Allen Brown and Colie Simmons. Despite of their position as AM, all of them, day in and day out, spent much of their time working similar tasks as the DMs and we had to work together to complete all the tasks we were assigned to.

23. The conversations I had with other DMs normally took place at the store when we work together on the floor.

24. During my employment with BBB, I was not paid proper overtime compensation at the overtime rate of one and one-half times the regular rate, despite of regularly working over 40 hours per workweek.

25. During my employment with BBB, I did not receive a proper wage and hour notice as required under New York Labor Law. I believe other DMs I worked with similarly did not receive proper written wage and hour notice at the time of their hiring, or prior to their promotion, as I did, or at the time when any changes in the information on the notice, informing them of their rates of pay or other requirements under the New York Labor Law.

26. During my employment with BBB, for each pay period, I was not given a proper statement for each and every wage payment and I believe other DMs I worked with similarly did not receive proper wage statements for all of their wage payments as well.

27. I have no known conflicts with any class member.

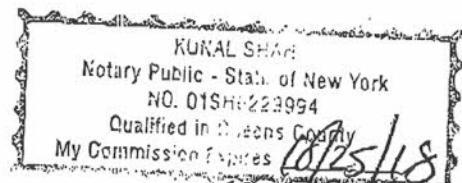
28. I am available to prosecute this case. I am ready, willing, and able to participate in discovery, including responding to interrogatories and documents requests and being deposed.

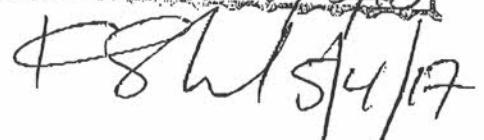
I understand English, I affirm, under penalty of perjury, that the above information is true and correct.

Dated: Flushing, New York

5/4/2017


Elizabeth Padilla




Kunal Shah
5/4/17